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RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 28th January, 1976:—

BILL No. XVI OF 1976

A Bill further to amend the Industrial Disputes Act, 1947.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Industrial Disputes (Amendment) Act, 1976.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

14 of 1947.

Amendment of section 25A.

2. In the Industrial Disputes Act, 1947 (hereinafter referred to as the principal Act), in section 25A, in sub-section (*1*), for the words "shall not apply—", the words, figure and letter "shall not apply to industrial establishments to which Chapter VB applies, or—" shall be substituted.

Insertion of new Chapter VB.

3. After Chapter VA of the principal Act, the following Chapter shall be inserted, namely:—

'CHAPTER VB

SPECIAL PROVISIONS RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS

Application of Chapter VB.

25K. (*1*) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Definitions.

25L. For the purposes of this Chapter,—

(*a*) "industrial establishment" means—

(*i*) a factory as defined in clause (*m*) of section 2 of the Factories Act, 1948; 63 of 1948.

(*ii*) a mine as defined in clause (*j*) of sub-section (*1*) of section 2 of the Mines Act, 1952; or 35 of 1952

(*iii*) a plantation as defined in clause (*f*) of section 2 of the Plantations Labour Act, 1951; 69 of 1951.

(*b*) notwithstanding anything contained in sub-clause (*ii*) of clause (*a*) of section 2,—

(*i*) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(*ii*) in relation to any corporation [not being a corporation referred to in sub-clause (*i*) of clause (*a*) of section 2] established by or under any law made by Parliament,

the Central Government shall be the appropriate Government.

Prohibition of lay-off.

25M. (*1*) No workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except with the previous permission of such authority as may be specified by the appropriate Government by notification in the Official Gazette, unless such lay-off is due to shortage of power or to natural calamity.

(2) Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment referred to in sub-section (*1*) have been laid-off before the commencement of the Industrial Disputes (Amendment) Act, 1976 and such lay-off continues at such commencement, the employer in relation to such establishment shall, within a period of fifteen days from such commencement, apply to the authority specified under sub-section (*1*) for permission to continue the lay-off.

(3) In the case of every application for permission under sub-section (*1*) or sub-section (*2*), the authority to whom the application has been made may, after making such inquiry as he thinks fit, grant or refuse, for reasons to be recorded in writing, the permission applied for.

(4) Where an application for permission has been made under sub-section (*1*) or sub-section (*2*) and the authority to whom the application is made does not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months.

(5) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (2) has been made within the period specified therein, or where the permission for the lay-off or the continuance of the lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen have been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(6) The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation.—For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

Conditions precedent to retrenchment of workmen

25N. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement, which specifies a date for termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette, and the permission of such Government or authority is obtained under sub-section (2).

(2) On receipt of a notice under clause (c) of sub-section (1) the appropriate Government or authority may, after making such inquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing, the permission for the retrenchment to which the notice relates.

(3) Where the Government or authority does not communicate the permission or the refusal to grant the permission to the employer within three months of the date of service of the notice under clause (c) of sub-section (1), the Government or authority shall be deemed to have granted permission for such retrenchment on the expiration of the said period of three months

(4) Where at the commencement of the Industrial Disputes (Amendment) Act, 1976, the period of notice given under clause (*a*) of section 25F for the retrenchment of any workman has not expired, the employer shall not retrench the workman but shall, within a period of fifteen days from such commencement, apply to the appropriate Government or to the authority specified in sub-section (2) for permission for retrenchment.

(5) Where an application for permission has been made under sub-section (4) and the appropriate Government or the authority, as the case may be, does not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months.

(6) Where no application for permission under clause (c) of sub-section (1) is made, or where no application for permission under sub-section (4) is made within the period specified therein or where the permission for the retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(7) Where at the commencement of the Industrial Disputes (Amendment) Act, 1976, a dispute relating, either solely or in addition to other matters, to the retrenchment of any workman or workmen of an industrial establishment to which this Chapter applies is pending before a conciliation officer or the Central Government or the State Government, as the case may be, and—

(*a*) there is an allegation that such retrenchment is by way of victimisation; or

(*b*) the appropriate Government is of the opinion that such retrenchment is not in the interests of the maintenance of industrial peace,

the appropriate Government, if satisfied that it is necessary so to do, may, by order, withdraw such dispute or, as the case may be, such dispute in so far as it relates to such retrenchment and transfer the same to an authority (being an authority specified by the appropriate Government by notification in the Official Gazette) for consideration whether such retrenchment is justified and any order passed by such authority shall be final and binding on the employer and the workman or workmen.

Ninety days' notice to be given of intention to close down any undertaking.

25-O. (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall serve, for previous approval at least ninety days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) On receipt of a notice under sub-section (1) the appropriate Government may, if it is satisfied that the reasons for the intended closure of the undertaking are not adequate and sufficient or such closure is prejudicial to the public interest, by order, direct the employer not to close down such undertaking.

(3) Where a notice has been served on the appropriate Government by an employer under sub-section (1) of section 25FFA and the period of notice has not expired at the commencement of the Industrial Disputes (Amendment) Act, 1976, such employer shall not close down the undertaking but shall, within a period of fifteen days from such commencement, apply to the appropriate Government for permission to close down the undertaking.

(4) Where an application for permission has been made under sub-section (3) and the appropriate Government does not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months.

(5) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(6) Notwithstanding anything contained in sub-section (1) and sub-section (3), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) or sub-section (3) shall not apply in relation to such undertaking for such period as may be specified in the order.

(7) Where an undertaking is approved or permitted to be closed down under sub-section (1) or sub-section (4), every workman in the said undertaking who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section shall be entitled to notice and compensation as specified in section 25N as if the said workman had been retrenched under that section.

Special provision as to restarting of undertakings closed down before commencement of the

25P. If the appropriate Government is of opinion in respect of any undertaking of an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976,—

(a) that such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;

(b) that there are possibilities of restarting the undertaking;

Industrial Disputes (Amendment) Act, 1976.

(c) that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and

(d) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking,

it may, after giving an opportunity to such employer and workmen, direct, by order published in the Official Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

Penalty for lay-off and retrenchment without previous permission.

25Q. Any employer who contravenes the provisions of section 25M or clause (c) of sub-section (*1*) or sub-section (*4*) of section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Penalty for closure.

25R. (*1*) Any employer who closes down an undertaking without complying with the provisions of sub-section (*1*) of section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(*2*) Any employer, who contravenes a direction given under sub-section (*2*) of section 25-O or section 25P, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

(*3*) Any employer who contravenes the provisions of sub-section (*3*) of section 25-O shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Certain provisions of Chapter VA to apply to an industrial establishment to which this Chapter applies.

25S. The provisions of sections 25B, 25D, 25FF, 25G, 25H and 25J in Chapter VA shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of this Chapter apply.'.

Amendment of section 38.

4. In sub-section (5) of section 38 of the principal Act, for the words "two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following", the words "two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Industrial Disputes Act, 1947 does not contain any provision for preventing lay-off and retrenchment. Though the Act provides for 60 days' notice by the employer prior to closing down an establishment employing 50 or more persons, it does not provide for any prior scrutiny of the reasons for such closure. The employers have an unfettered right to close down an establishment, subject to the provision of 60 days' notice.

2. There have been many cases of large-scale lay-offs, particular by large companies and undertakings. Cases of large-scale retrenchment as well as closures have also been reported time and again. This action on the part of the management has resulted in an all-round demoralising effect on the workmen. In order to prevent avoidable hardship to the employees and to maintain higher tempo of production and productivity, it has become now necessary to put some reasonable restrictions on the employer's right to lay-off, retrenchment, and closure. This need has also been felt by different State Governments.

3. This Bill, therefore, seeks to amend the Industrial Disputes Act to make prior approval of the appropriate Government necessary in the case of lay-off, retrenchment and closure in industrial establishments where 300 or more workmen are employed. This is sought to be achieved by inserting a new Chapter VB in the Act In the interests of rehabilitation of workmen and for maintenance of supplies and services essential to the life of the community, there is a provision in the Bill for restarting the undertakings which were already closed down otherwise than on account of unavoidable circumstances beyond the control of the employer.

4. It is also proposed to provide for more stringent penalties for the contravention of the provisions of Chapter VB. For the purposes of this Chapter, it is also proposed to make the Central Government the appropriate Government in respect of companies in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government and of corporations established by or under law made by Parliament.

5 The Bill is designed to give effect to the above proposals.

NEW DELHI; K V. RAGHUNATHA REDDY.

The 22nd January, 1976

MEMORANDUM REGARDING DELEGATED LEGISLATION

Under the provisions of the Bill certain authorities are to be specified by notification, *vide* sections 25M(1), 25N(1) (c) and 25N(7) of the proposed Chapter VB. It is also mentioned in sections 25N(1) (c) and 25-O(1) of the proposed Chapter VB, that an employer has to serve notice prior to retrenchment of employees or closing down of any undertaking, to the appropriate Government in the prescribed manner. These provisions which are only matters of procedure, are necessary for effective implementation of the provisions of the Bill. The delegation of legislative power is, therefore, of a normal character.

B. N. BANERJEE,
Secretary-General.

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